IN THE HIGH COURT OF BOMBAY AT GOA
****

LETTERS PATENT APPEAL NO. 2 OF 2001

1. Shri Shambaji V. Karapurkar,

2. Shri Rajaram V. Karapurkar,

3. Shri Jedev V. Karapurkar
   (deceased) through his legal
   heirs:
   a) Smt. Laxmibai Karapurkar,
   b) Shri Rajesh Karapurkar,
   c) Shri Sanjay Karapurkar,
   d) Kum. Smita Karapurkar,

4. Shri Narahari V. Karapurkar,
   (deceased), through his legal heirs:
   a) Smt. Swarna Karapurkar,
   b) Kum. Kavita Karapurkar,
   c) Kum. Kirtimala Karapurkar,
   d) Shri Kedar Karapurkar,

5. Shri Pandurang V. Karapurkar,
   all majors, r/o Vasco da Gama,
   Goa. ... Appellants.

Versus

1. Shri Daud M. Aga, r/o
   Panaji, Goa,

2. Rent Controller, with
   office at Panaji, Goa, and

3. Administrative Tribunal
   with office at Panaji, Goa. ... Respondents.

Shri M. S. Usgaokar, Senior Advocate with Shri Sudesh Usgaokar, advocate for the appellants.

Shri S. G. Dessai, Senior Advocate with Shri Shivan Dessai, advocate for the respondent no.1.

CORAM : V. G. PALSHIKAR &
P. V. HARDAS, JJ.

DATE : 7th October, 2003.

ORAL JUDGMENT (Per Palshikar, J.)

By this Appeal the appellants have impugned an Order passed by a learned Single Judge of this Court in exercise of

powers of this Court under Article 227 of the Constitution of India. At the outset, objection was raised to the maintainability of the Appeal in view of several decisions of this Court and the Supreme Court. It was contended on behalf of the respondents that the Appeal is not maintainable because the order impugned in the Appeal is squarely made under Article 227 of the Constitution.

2. Meeting this contention, the learned counsel appearing on behalf of the appellants submits that the petition was filed under Article 226 and Article 227 of the Constitution of India and the learned Judge had decided the same on pure application of law and, therefore, whatever be the observations of the learned Judge, the petition is one under Article 226 of the Constitution. It must be noted that the learned Judge himself has observed as under:-

> "In exercise of extraordinary jurisdiction of this Court under Art.227 this Court itself in the interest of justice can exercise that jurisdiction. The proceedings have been pending since the year 1981. 19 years have elapsed and in these circumstances, this Court can look into the issue whether on the facts as they stand the respondent had shown sufficient cause."

It was, therefore, clearly an exercise of jurisdiction which could have been required from either the Tribunal or the Rent Controller by remanding the matter, but the learned Judge chose, in view of the powers vested in this Court under

Article 227 of the Constitution, to exercise that jurisdiction in this petition. There is, therefore, no doubt about the intent of the learned Judge that he was exercising jurisdiction under Article 227 of the Constitution.

3. Reliance is placed by the learned counsel appearing on behalf of the respondent no.1 on a judgment of the Supreme Court in **Kanhaiyalal Agrawal & Ors. vs. Gwalior Sugar Co. Ltd., (2001)9 SCC 609**, where the Supreme Court has observed that the exercise of jurisdiction as done by the Court has to be seen. The observations of the Supreme Court read as under:-

> "6. So far as the law on the matter is concerned, as to whether an appeal would lie against an order made in writ petition before the High Court challenging an order of the Labour Court, this Court in its decision in **Lokmat Newspapers (P) Ltd. vs. Shankarprasad** stated that **if a Single Judge exercises jurisdiction under Article 226, letters patent appeal would be maintainable, but if the jurisdiction is exercised under Article 227 it will not be maintainable.** But with an explanation that <u>if the Single Judge of the High Court in considering the petition under Article 226 or Article 227 does not state under which provision he has decided the matter</u> and where the facts justify filing of petition both under Article 226 and Article 227 and a petition so filed is dismissed by the Single Judge on merits, the matter may be considered in its proper perspective in an appeal. This Court held as aforesaid in view of the decisions of this Court in **Umaji Keshao Meshram v. Radhikabai, Ratnagiri Distt. Central Coop. Bank Ltd. vs. Dinkar Kashinath Watve and Sushilabai Laxminarayan** Mudliyar vs. Nihalchand Waghajibhai Shah." (Emphasis supplied)

The Supreme Court has here observed that where the learned Single Judge of the High Court, while deciding the petition, does not state under which Article he has decided the matter, it may be that jurisdiction could have been invoked either under Article 226 or Article 227 of the Constitution.

4. In the present case such is not the position. We have quoted above, the observations of the learned Single Judge. The dicta of the judgment referred to above is very clear and, in our opinion, therefore, the Letters Patent Appeal as lodged, is not maintainable. It is dismissed as such.

V. G. PALSHIKAR, J.

P. V. HARDAS, J.

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